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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,388	08/04/2006	Jim A. Rivera	60469-106 PUS1; PA-000.05	7135
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John M Siragusa Carlson, Gaskey & Olds 400 W Maple Road Suite 350 Birmingham, MI 48009			EXAMINER KRUER, STEFAN	
			ART UNIT 3654	PAPER NUMBER
			MAIL DATE 06/17/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/588,388

**Applicant(s)**

RIVERA, JIM A.

**Examiner**

Stefan Krueer

**Art Unit**

3654

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22, 24 - 25, 27 - 31, 33, 35 - 39 and 41 - 46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22, 24 - 25, 27 - 31, 33, 35 - 39 and 41 - 46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-849)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**Claims 31, 33, 35 – 36 and 45 - 46** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

**Claim 31**, Line 6, recites as amended "... first and second *overlapping* clips..." whereby the term "overlapping" is referenced in the disclosure upon broad reference of prior art in which a portion of clips overlap a guide rail whereas applicant's invention, as understood, is directed to "A second segment 30A, 30B facilitates securing adjustably the clips 20A, 20B to a corresponding mount 18. The second segments 30A, 30B are generally rectangular plates that *rest one atop the other*." (Para. 0021 of published application).

In that the term "overlapping" is defined as "extend(ing) over or past and covering a part of" (Merriam-Webster Online Dictionary), whereby the disclosure reviews "... second segments 30A, 30B are generally rectangular plates that *rest one atop the other*", said recitation, "... first and second *overlapping* clips...", is not supported by the disclosure.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 22 and 27 – 31, 33, 35 – 36 and 45** rejected under 35 U.S.C. 102(b) as being anticipated by Karol (4,577,729).

**Re: Claims 22, 27 – 30 and 45**, Karol discloses a mounting bracket assembly (10, Fig. 1) for an elevator system guide rail (12) respectively comprising:

- a mount (36) securable within a hoistway; and
- first and second clips (40 and 42) *securable* to each other (by 162, 168, 204, 170, 172) for establishing a selectively adjustable clamp dimension (distance between 200 and 34 – webbing: 16, 18, Fig. 2; 188, Fig. 3) for securing the guide rail, each of said first and second clips securable to said mount (via 44, 48, 56 and 52);
- wherein each clip comprises a first segment (190 by 210, 212, Fig. 8) securable to the guide rail and a second segment (192) securable to said mount (by 204, Fig. 8 + 162, 142, 140 & 168, 244, 140, respectively, Fig. 3);
- wherein each of said first segments includes at least one opening (202) and a fastening member (44 & 46, respectively) at least partially received through said opening to secure the first segments to each other (via 162-140-168) and to place said clips in a fixed position relative to each other;

and

- wherein each said second segment includes at least one opening (202) and including a securing member (44 & 46, respectively) at least partially received through said opening to secure said clips to said mount (36);
- wherein said opening has at least one dimension that is larger than a portion of said securing member (threaded shaft) received within said opening to allow selected movement of said clips relative to said mount;
- wherein said first and second clips are mirror images of one another;
- wherein said first and second clips remain substantially perpendicular (to rail/one another) during vertical movement of the guide rail, respectively.

In reference to the claim language referring to *securable to*, intended use and other types of functional language must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. In re Casey, 152 USPQ 235 (CCPA 1967); In re Otto, 136 USPQ 458, 459 (CCPA 1963).

**Re: Claims 31, 33 and 35 - 36**, Karol discloses an elevator system respectively comprising:

- an elevator car (Col. 1, L. 13); at least one guide rail (12); and a mounting bracket assembly (36, 220) for securing said guide rail within a hoistway (Col. 1, L. 13), said mounting bracket assembly comprising a mount (36) securable in a fixed position, and first and second overlapping clips (40, 42, wherein the modifier "overlapping" is commensurate with applicant's review of the prior art as addressed above) adjustably secured to each other (via 142, 144, 140 and 170, 172) and to the mount for establishing a selectively adjustable clamping dimension (188, Fig. 3 or distance between 190 of respective 40, 42) for securing the guide rail to the mounting bracket assembly, wherein each clip comprises a first segment (190 by 210, 212) securable to the guide rail and a second segment (192) securable to said mount and including open portion facing each other establishing a clamp dimension (distance between 190 of respective 40, 42) there between;
  - wherein said clamp dimension is adjustable (Col. 4, L. 18) to accommodate the guide rail;
- and
- wherein each of said second segments include at least one opening (202) and a securing member (44) at least partially received through said opening to secure said clips to said mount;

- wherein said opening is larger than a portion of said securing member (shaft) received within said opening to allow selected movement of said clips relative to said mount.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 24 - 25** are rejected under 35 U.S.C. 103(a) as being unpatentable over Karol in view of Pearson (5,316,108).

Karol is silent with respect to his first segment comprising a C-shaped portion.

Attention is directed to Pearson who teaches his clips (4, Col. 4, L. 8) each comprise a first segment (4.1 – 4.2), having a hole (4.3) and forming a C-shaped portion, wherein a spacing between said C-shaped portions establishes a clamp dimension (Col. 4, L. 4 – 8), wherein said clamp dimension is selectively adjustable to accommodate the guide rail (Col. 3, L. 42 – 44).

It would have been obvious to one of ordinary skill in the art to modify the reference of Karol with the teaching of Pearson for fewer loose components.

**Claim 37 – 39, 41 – 44 and 46** are rejected under 35 U.S.C. 103(a) as being unpatentable over Karol in further view of McDermott (995,075).

**Re: Claims 37, 43 – 44 and 46**, Karol discloses a method of installing a guide rail within a hoistway comprising the steps of:

- a) positioning a first clip (40) and a second clip (42) about a guide rail (12) by securing the first clip to the second clip (in combination with 38);
- b) moving said first and second clips to a mounting position (align with 220, 36);
- c) adjusting a clamp dimension (distance between 190 of clips 40, 42);  
dimension 188, Fig. 3, Col. 4, L. 18) between said first and second clips;

d) securing said first and second clips to a mount (securing with 44); and  
e) securing said mount in a fixed position (tightening with 48, 56 & 52); however,  
with respect to Claims 37 and 43, Karol is silent with respect to at least part of his first and second clips overlapping each other, as well as with respect to Claims 44 and 46, Karol is silent with respect to his second segments overlapping each other when said first and second clips are in said fixed position.

Attention is directed to McDermott who teaches his method of installing a rail comprising the step of securing a first clip (4, 6, Fig.'s 1 & 2) to a second clip (3, 5, Fig.'s 1 & 3) with at least part (4, 3, respectively) of the first and second clips overlapping each other (Fig. 1), wherein said part comprise a second segment of said first and second clips, for features comprising "... simplicity... small number of parts required... [and] ... reduced costs of manufacture..." (Pg. 2, L. 29 – 39).

It would have been obvious to one of ordinary skill in the art to modify the reference of Karol with the teaching of McDermott for benefits of reduction in components and therein savings in costs of manufacture and installation.

**Re: Claims 38 – 39 and 41 - 42,** Karol inherently discloses, respectively:

- aligning the guide rail (12) within the hoistway after the clips are in the mounting position;
- sliding the first and second clip longitudinally along the guide rail (12) to the mounting position; and
- laterally adjusting said first and second clips relative to said mount to allow lateral positioning of the guide rail (sliding along 220 for alignment);
- aligning said guide rail by moving said first and second clips relative to said mount (sliding along 36 for alignment).

### ***Response to Arguments***

Applicant's arguments filed 8 April 2009 with respect to independent **Claims 22, 31 and 37** have been fully considered but they are not persuasive.

The rejections of the previous office action were in response to the claim language. Applicant's arguments are solely based on the amended claim language of the independent claims applied to the prior art of record; consequently, this office action comprises a detailed response to Applicant's arguments.

With respect to **Claims 24 - 25**, applicant has not argued the rejections; rather, applicant has reiterated the lack of anticipation and teachings of the cited prior art of record with respect to the amended language of independent **Claim 22**.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Valjus et al (7,165,656) and Mathius (2,211,021); Hepler (1,707,720) and Nagase et al (JP-06156925A); and Anderson (3,199,642), Karol (4,431,087) and Sneed (6,186,356) are cited respectively for:

- a mounting bracket assembly for elevator guide rail having first and second clips secured to each other for selectively adjusting a clamp dimension and said clips each having first and second segments for respective securing to said guide rail and a mount;

- first and second clips each comprising a first segment, having a hole and forming a C-shaped portion; and
- mounting bracket assemblies for elevator guide rails.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefan Kruer whose telephone number is 571.272.5913. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Q. Nguyen, can be reached on 571.272.6952. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866.217.9197 (toll-free).

/Stefan Kruer/

Examiner, Art Unit 3654

12 June 2009

/John Q. Nguyen/

Supervisory Patent Examiner, Art Unit 3654